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22913   7590   10/18/2007
WORKMAN NYDEGGER
60 EAST SOUTH TEMPLE
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EXAMINER
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ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/828,760	WARREN ET AL.
	Examiner	Art Unit	
	La Juania N. Mouzon	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2004*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 April 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Drawings

1.   The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5)

because they do not include the following reference sign(s) mentioned in the

description: 430 (¶0062 line(s) 5). Corrected drawing sheets in compliance with 37 CFR

1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures

appearing on the immediate prior version of the sheet, even if only one figure is being

amended. Each drawing sheet submitted after the filing date of an application must be

labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37

CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be

notified and informed of any required corrective action in the next Office action. The

objection to the drawings will not be held in abeyance.

2.   The drawings are objected to under 37 CFR 1.83(a). The drawings must show

every feature of the invention specified in the claims. Therefore, the act of changing the

user-interface as referenced to in claims 11-13 must be shown or the feature(s)

canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in

reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate

prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next

Office action. The objection to the drawings will not be held in abeyance.

Specification

3.   Applicant is reminded of the proper language and format for an abstract of the
disclosure.

        The abstract should be in narrative form and generally limited to a single
paragraph on a separate sheet within the range of 50 to 150 words. It is important that
the abstract not exceed 150 words in length since the space provided for the abstract
on the computer tape used by the printer is limited. The form and legal phraseology
often used in patent claims, such as "means" and "said," should be avoided. The
abstract should describe the disclosure sufficiently to assist readers in deciding whether
there is a need for consulting the full patent text for details.

        The language should be clear and concise and should not repeat information
given in the title. It should avoid using phrases which can be implied, such as, "The
disclosure concerns," "The disclosure defined by this invention," "The disclosure
describes," etc.

Claim Objections

4.   Claim 27 is objected to because of the following informalities: line(s) 6 has two

commas. One needs to be removed.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

6.   Claim 26 and 27 rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. As defined in the specification a computer

readable medium can be a transmitted on any media (¶0020 line(s) 9), such as a carrier

wave or any form of signal.

Software, *per se*:

The claims lack the necessary physical articles or objects to constitute a machine or a
manufacture within the meaning of 35 USC 101. They are clearly not a series of steps
or acts to be a process nor are they a combination of chemical compounds to be a
composition of matter. As such, they fail to fall within a statutory category. They are, at
best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or
"nonfunctional descriptive material." Both types of "descriptive material" are nonstatu-
tory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759.
When functional descriptive material is recorded on some computer-readable medium, it
becomes structurally and functionally interrelated to the medium and will be statutory in
most cases since use of technology permits the function of the descriptive material to be
realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed.
Cir. 1994)
Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a
computer-readable medium, in a computer, or on an electromagnetic carrier signal,

does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8.   Claims 1, 6, 10-14, 17, 18, 25-27 are rejected under 35 U.S.C. 102(b) as being

anticipated by Phaal (US 6,006,269).

9.   In regards to claim 1 Phaal discloses, at a computer system that is network

connectable to a messaging server, the computer system configured to provide user

access to data stored at the messaging server, a method for requesting data that

provides an improved user experience when the messaging server is experiencing

increased load **(Col. 4 line(s) 46-57)**, the method comprising:

       a.   an act of sending a data request to the messaging server **(Fig. 1 and Col.**

       5 line(s) 17-24, teach the client (#19) sending a data request (#21) to the

       host (server #15).);

       b.   an act of receiving a server response including an adaptively generated

       wait hint, the adaptively generated wait hint being an indication that the

       messaging server was unable to process the data request **(Fig. 1 and Col. 6**

       line(s) 12-29, teach the client receiving a response from the server (#33,

message from the deferral manager (#31) to the client.) including an

amount of time (wait hint) in which the client should wait before trying its

request, because the server is unable to process the request.);

c.   an act of waiting a specified wait time in accordance with the adaptively

generated wait hint to thereby reduce the load on the messaging server **(Col. 6**

line(s) 50-67 – Col. 7 line(s) 1-11, teach the client waiting the specified time

indicated in the wait hint to reduce load on the server.); and

d.   an act of resending the data request subsequent to waiting the specified

wait time **(Col. 6 line(s) 50-67 – Col. 7 line(s) 1-11, teach resending the**

request after the wait time has expired.).

10.   In regards to claim 6 Phaal discloses, wherein the act of waiting a specified wait

time in accordance with the adaptively generated wait hint comprises randomizing the

specified wait time **(Table 1 and Col. 6 line(s) 41-48, teach that the wait time is**

randomly calculated.).

11.   In regards to claim 10 Phaal discloses, an act of receiving a second server

response including a second adaptively generated wait hint subsequent to resending

the data request, the second adaptively generated wait hint being an indication that the

messaging server was unable to process the data request **(Col. 9 line(s) 38-44, teach**

the server receiving a second request and sending a second deferral message

due to the sever being unable to process the request.); an act of waiting a second

specified wait time in accordance with the second adaptively generated wait hint to

thereby reduce the load on the messaging server **(Col. 6 line(s) 50-67 – Col. 7 line(s) 1-11, teach the client waiting the specified time indicated in the wait hint to reduce load on the server. It is inherent that the same process is followed as the first waiting process.)**; and an act of again resending the data request subsequent to waiting the second specified wait time **(Col. 6 line(s) 50-67 – Col. 7 line(s) 1-11, teach resending the request after the wait time has expired. It is inherent that the same process is followed as the first waiting process.).**

12.   In regards to claim 11 Phaal discloses, an act of receiving message related data corresponding to the data request subsequent to resending the data request **(Fig. 1 and Col. 5 line(s) 17-24, teach the client (#19) receiving a response corresponding to the request (#23), from the server (#17).)**; and an act of updating a user-interface to reflect that the message related data was received **(Fig. 1 and Col. 5 line(s) 17-24, it is inherent that the outgoing messages being received by the client will update the user-interface to reflect the data received..**

13.   In regards to claim 12 Phaal discloses, an act of causing a user-interface to indicate that the data request is still being processed notwithstanding that the messaging server was unable to process the data request **(Col. 6 line(s) 62-67 – Col. 7 line(s) 1-3, teach that the deferral manager downloading a webpage to the client indicating that the server was unable to process the request.).**

14.   In regards to claim 13 Phaal discloses, the act of causing a user-interface to

indicate that the data request is still being processed comprises a message provider

causing a messaging interface to indicate that the data request is still being processed

(Col. 6 line(s) 62-67 – Col. 7 line(s) 1-3, teach the deferral manager (message

provider) downloading a webpage to the client indicating that the request is still

being processed.).

15.   In regards to claim 14 Phaal discloses, at a computer system that is network

connectable to a plurality of clients, the computer system configured to process client

data requests for data maintained at the computer system and return appropriate data

to corresponding requesting clients, a method for regulating client requests so as to

provide an improved user experience when the messaging server is experiencing

increased load **(Col. 4 line(s) 46-57)**, the method comprising:

   e.   an act of receiving a client data request from a client **(Fig. 1 and Col. 5**

   line(s) 17-27, teach the host (#15, server) receiving a request (#21) from the

   client (#19).);

   f.   an act of determining that the computer system is unable to process the

   client data request, subsequent to receiving the client data request **(Col. 6 line(s)**

   12-15, teach the admission control gateway verifying if the server has the

   appropriate resources to perform the request.);

   g.   an act of adaptively generating a wait hint, the adaptively generated wait

   hint representing that the client is to wait a specified wait time before resending

the client data request to thereby reduce the load at the computer system **(Col. 6 line(s) 26-29, teach the deferral manager, in conjunction with a scheduler, generating a wait hint. The wait hint including the amount of time the client should wait before resending the request to reduce the load at the computer system.)**; and

h.   an act of sending a server response that includes the adaptively generated wait hint to the client **(Fig. 1 and Col. 6 line(s) 26-29, teach the client receiving a response from the server (#33, message from the deferral manager (#31) to the client.) including an amount of time (wait hint) in which the client should wait before trying its request, because the server is unable to process the request.).**

16.   In regards to claim 17 Phaal discloses, wherein the act of determining that the computer system is unable to process the client data request comprises an act of determining that the computer system lacks the resources to process the client data request in parallel with other requests that are being processed **(Col. 5 line(s) 58-67 - Col. 6 line(s) 1-15, teach there is a resource monitor that monitors the resources of the system and the admission control gateway verifies if there is enough resources to process the request in conjunction (parallel) with other request already being processed.).**

17.   In regards to claim 18 Phaal discloses, wherein the act of determining that the computer system is unable to process the client data request comprises an act of

determining that the computer system is already processing a configured maximum

number of requests that can be processed in parallel **(Col. 5 line(s) 65-67 – Col. 6**

line(s) 1-3, teach the resource monitor having defined parameters setting the

desired maximum load or threshold. It is inherent that these parameters include

the number of request that can be processed in parallel.).

18.   In regards to claim 25 Phaal discloses, an act of receiving a resent client data

request from the client, the resent client data request requesting the same data as the

client request **(Col. 9 line(s) 38-44, teach the server receiving a second request, for**

the same data that was previously deferred.); an act of determining that the

computer system is unable to process the resent client data request, subsequent to

receiving the resent client data request **(It is inherent that the resent client request**

mentioned in Col. 9 line(s) 38-44 uses the same process to determine if the client

has the appropriate resources to process the request as mentioned in Col. 6

line(s) 12-15.); an act of adaptively generating a second wait hint, the adaptively

generated second wait hint representing that the client is to wait a second specified wait

time before resending the resent client data request to thereby reduce the load at the

computer system **(Col. 6 line(s) 26-29, teach the deferral manager, in conjunction**

with a scheduler, generating a wait hint. The wait hint including the amount of

time the client should wait before resending the request to reduce the load at the

computer system. It is inherent that the same process is used for the second

request as the first.); and an act of sending a second server response that includes

the adaptively generated second wait hint to the client **(Fig. 1 and Col. 6 line(s) 26-29,**

teach the client receiving a response from the server (#33, message from the

deferral manager (#31) to the client.) including an amount of time (wait hint) in

which the client should wait before trying its request, because the server is

unable to process the request. It is inherent that the same process is used for the

second request as the first.).

19.   In regards to claim 26 Phaal discloses, a computer program product for use at a

computer system that is network connectable to a messaging server, the computer

system configured to provide user access to data stored at the messaging server, the

computer program product for implementing a method for requesting data that provides

an improved user experience when the messaging server is experiencing increased

load, the computer program product comprising one or more computer-readable media

having stored thereon computer-executable instructions that, when executed by a

processor, cause the computer system to perform the following:

    i.   send a data request to the messaging server **(Fig. 1 and Col. 5 line(s)**

17-24, teach the client (#19) sending a data request (#21) to the host (server

#15).);

    j.   receive a server response including an adaptively generated wait hint, the

adaptively generated wait hint being an indication that the messaging server was

unable to process the data request **(Fig. 1 and Col. 6 line(s) 12-29, teach the**

client receiving a response from the server (#33, message from the deferral

manager (#31) to the client.) including an amount of time (wait hint) in

which the client should wait before trying its request, because the server is

unable to process the request.);

k.   wait a specified wait time in accordance with the adaptively generated wait

hint to thereby reduce the load on the messaging server **(Col. 6 line(s) 50-67 –**

Col. 7 line(s) 1-11, teach the client waiting the specified time indicated in

the wait hint to reduce load on the server.); and

l.   resend the data request subsequent to waiting the specified wait time

(Col. 6 line(s) 50-67 – Col. 7 line(s) 1-11, teach resending the request after

the wait time has expired.).

20.   In regards to claim 27 Phaal discloses, a computer program product for use at a

computer system that is network connectable to a plurality of clients, the computer

system configured to process client data requests for data maintained at the computer

system and return appropriate data to corresponding requesting clients, the computer

program product for implementing a method for regulating client requests so as to

provide an improved user experience when the messaging server is experiencing

increased load, , the computer program product comprising one or more computer-

readable media having stored thereon computer-executable instructions that, when

executed by a processor, cause the computer system to perform the following:

m.   receive a client data request from a client **(Fig. 1 and Col. 5 line(s) 17-27,**

teach the host (#15, server) receiving a request (#21) from the client (#19).);

n.   determine that the computer system is unable to process the client data

request, subsequent to receiving the client data request **(Col. 6 line(s) 12-15,**

teach the admission control gateway verifying if the server has the

appropriate resources to perform the request.);

o.   adaptively generate a wait hint, the adaptively generated wait hint

representing that the client is to wait a specified wait time before resending the

client data request to thereby reduce the load at the computer system **(Col. 6**

line(s) 26-29, teach the deferral manager, in conjunction with a scheduler,

generating a wait hint. The wait hint including the amount of time the client

should wait before resending the request to reduce the load at the

computer system.); and

p.   send a server response that includes the adaptively generated wait hint to

the client **(Fig. 1 and Col. 6 line(s) 26-29, teach the client receiving a**

response from the server (#33, message from the deferral manager (#31) to

the client.) including an amount of time (wait hint) in which the client

should wait before trying its request, because the server is unable to

process the request.).

Claim Rejections - 35 USC § 103

21.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

22.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

23.   Claims 7 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the

alternative, under 35 U.S.C. 103(a) as obvious over Phaal (US 6,006,269).

24.   In regards to claims 7 and 19 Phaal discloses, wherein the act of waiting a

specified wait time in accordance with the adaptively generated wait hint comprises

application of the wait hint to a provider side algorithm that attempts to reduce the load

at the messaging server **(Col. 6 line(s) 25-30 and 10 line(s) 24-25, shows that it is**

inherent and if not inherent obvious that the wait hint is calculated via a provider

side (Scheduler) algorithm that attempts to reduce the load at the messaging

server.).

25.   Claims 2, 3, 4, 5, 8, 9, 15, 16, 23, and 24 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Phaal (US 6,006,269) as applied to claims 1 and 14 above,

and further in view of Garg et al. (US 2002/0138613).

26.   In regards to claims 2 and 15 Phaal does not teach, wherein the act of sending a

data request to the messaging server comprises an act of sending a synchronization

request.

27.   In the same field of endeavor Garg et al. teach sending any type of request, i.e. a

synchronization request, to a server to process and if the server is available and has

enough resources process the request accordingly. Otherwise issues a time notification

message that includes a time that the server will be available to process the request

(¶0016 line(s) 1-8).

28.   Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Phaal's admission control system with messages

admitted or deferred for re-submission at a later time on a priority basis with Garg et al.

teaching as discussed above to allow for the capability of a client sending varies types

of request to a server to access relative data to the user.

29.   In regards to claims 3 and 16 Phaal does not teach, wherein the act of sending a

data request to the messaging server comprises an act of issuing an RPC call.

30.   In the same field of endeavor Garg et al. teach sending any type of request, i.e. a

RPC call, to a server to process and if the server is available and has enough resources

process the request accordingly. Otherwise issues a time notification message that

includes a time that the server will be available to process the request (¶0016 line(s) 1-

8).

31.   Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Phaal's admission control system with messages

admitted or deferred for re-submission at a later time on a priority basis with Garg et al.

teaching as discussed above to allow for the capability of a client sending varies types

of request to a server to access relative data to the user.

32.   In regards to claims 4 and 23 the combination of Phaal and Garg et al. discloses,

wherein the act of receiving a server response including an adaptively generated wait

hint comprises an act of receiving a buffer from the server in response to an RPC call

(Col. 6 line(s) 61-65, teach the client receiving from the server the wait hint and a

buffer (webpage) in response to an RPC call. As mentioned above Garg et al.

teach issuing RPC calls, therefore it is obvious that the reply would be in

response to the RPC call.).

33.   In regards to claims 5 and 24 the combination of Phaal and Garg et al. discloses,

wherein the act of receiving a buffer from the server in response to an RPC call

comprises an act of receiving a buffer that includes an error code and a corresponding

wait hint, the error code indicating that the server was busy **(Col. 6 line(s) 66-67 – Col**

7 line(s) 1-3, teach the client receiving the wait hint and buffer (webpage). The

buffer including an error code indicating that the server was busy. As mentioned

above Garg et al. teach issuing RPC calls, therefore it is obvious that the reply

would be in response to the RPC call.).

34.   In regards to claim 8 the combination of Phaal and Garg et al. discloses, wherein

the act of resending the data request subsequent to waiting the specified time

comprises reissuing an RPC call that was originally issued to send the data request

(Col. 6 line(s) 50-67 – Col. 7 line(s) 1-11, teach resending the originally request

after the wait time has expired. Garg et al. as mention above teach that the

request is issuing a RPC call.).

35.   In regards to claim 9 Phaal's does not teach, further comprising: an act of

receiving a synchronization command from a user.

36.   In the same field of endeavor Garg et al. teach sending any type of request, i.e. a

synchronization request, to a server to process and if the server is available and has

enough resources process the request accordingly. Otherwise issues a time notification

message that includes a time that the server will be available to process the request

(¶0016 line(s) 1-8).

37.   Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Phaal's admission control system with messages

admitted or deferred for re-submission at a later time on a priority basis with Garg et al.

teaching as discussed above to allow for the capability of a client sending varies types

of request to a server to access relative data to the user.

38.   Claims 20- 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Phaal (US 6,006,269).

39.   In regards to claim 20 Phaal's discloses, wherein the act of adaptively generating

a wait hint in accordance with a configurable wait hint generation algorithm comprises

an act of generating a wait hint in accordance with a wait hint generation algorithm that

increases the wait time represented by each successive wait hint corresponding to the

same data request **(Col. 6 line(s) 29-30 and Col. 10 line(s) 24-25, demonstrates that**

any number of ways can be used to implement optimizing the server processing.

Therefore having the algorithm increase a the wait time represented by each

successive wait hint corresponding to the same data request is an obvious

variation of a way to implement optimizing the server processing.).

40.   In regards to claim 21 Phaal's discloses, wherein the act of adaptively generating

a wait hint in accordance with a configurable wait hint generation algorithm comprises

an act of generating a wait hint in accordance with a wait hint generation algorithm that

accesses external configurable parameter values **(Col. 6 line(s) 29-30 and Col. 10**

line(s) 24-25, demonstrates that any number of ways can be used to implement

optimizing the server processing. Therefore having the algorithm accesses

external configurable parameter values is an obvious variation of a way to

implement optimizing the server processing.).

41.   In regards to claim 22 Phaal's discloses, wherein the act of adaptively generating

a wait hint comprises an act of generating a wait hint for a data request based on the

connection speed of the client that sent the data request **(Col. 6 line(s) 29-30 and Col.**

10 line(s) 24-25, demonstrates that any number of ways can be used to implement

optimizing the server processing. Therefore generating a wait hint for a data

request based on the connection speed of the client that sent the data request is

an obvious variation of a way to implement optimizing the server processing.).

Conclusion

42.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. Phaal (US 6,055,564) admission control where priority indication
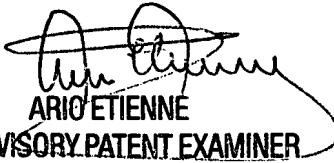
is used to discriminate between messages.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to La Juania N. Mouzon whose telephone number is 571-

270-3045. The examiner can normally be reached on Monday - Friday 8:00-5:00, 1st

Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton Burgess can be reached on 571-272-3949. The fax phone number

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